



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
15 Flanders Memorial Road
P.O. Box 190
Weare, NH 03281
Phone: (603) 529-2250
Fax: (603) 529-4554

Naomi L. Bolton
Land Use Coordinator

Office Hours:
Monday
thru
Friday
8 AM – 4:30 PM

ZONING BOARD OF ADJUSTMENT
MINUTES
OCTOBER 6, 2009
(Approved as written 11/3/09)

PRESENT: Ian McSweeney, Chairman; Jack Dearborn, Vice Chairman; David Ruoff; June Purington; Forrest Esenwine; Malcolm Wright, Alternate; Neal Kurk, Alternate; Elwood Stagakis, Alternate; Naomi L. Bolton, Land Use Coordinator.

GUESTS: Mark Lanier; Art Siciliano, LLS; Anthony Costello; Bobbi-Jo Plamondon; Ginger Esenwine; Stephen Najjar; Doug Hatch; Joan Hatch; Linda Chatfield.

I. INTRODUCTION:

Chairman Ian McSweeney called this meeting to order at 7:30 PM and stated that he wanted to take up an administrative item first on the agenda. .

II. ADMINISTRATIVE ITEMS:

Chairman McSweeney stated that due to personal commitments he would be stepping down from the position of Chairman but would still remain a board member. June Purington moved to appoint Jack Dearborn as Chairman and David Ruoff as Vice Chairman; Forrest Esenwine seconded the motion, all in favor. Chairman Dearborn asked the members to introduce themselves.

III. PUBLIC HEARINGS:

Case #00909 Mark & Joyce Lanier (Continued Hearing)

Variance, Article 28, Section 28.9

The applicant is requesting permission to construct a shared driveway through the 25' wetland buffer.

Tax Map 403-159

Concord Stage Road (Rt. 77)

Elwood Stagakis asked for a point of order. He asked about the voting members for this hearing. Chairman Dearborn stated that the regular five members. Mr. Stagakis stated that he was part of the original hearing and there are members present tonight that did not sit on any of the previous times it was before the board. Chairman Dearborn asked Mr. McSweeney if he would be willing to step down from this hearing. Mr. McSweeney stated that he would. Chairman Dearborn appointed Elwood Stagakis as a voting member for this hearing. Art Siciliano handed the board a package of information that was put together by Mr. Lanier's attorney. Mr. Stagakis stated that this seems to happen quite frequently and he thinks this hearing should be continued to give him time to

review it before the hearing. Mr. Stagakis made a motion to continue this hearing. There was no second, therefore the motion fails. Chairman Dearborn asked those present to take about 5 minutes to read the submittal made by Mr. Siciliano.

Chairman Dearborn stated that for the record we received three plan documents. The first is a driveway plan; the second is a subdivision plan with contours; and the third is a subdivision plan without contours showing only wetlands.

Mr. Stagakis inquired about engineering reports, he stated that he has been here for all the hearings and he has not seen an engineering report. Mr. Lanier's engineer stated he has the backup information that he did with this plan.

Forrest Esenwine stated that all we have before us is two small crossings and they did supply the engineering information. The regulation does not say that we must have it 21 days in advance for all to scrutinize.

Chairman Dearborn stated that he would like to move forward with this case. The board discussed that a soils scientist and wetlands scientist, Tom Carr went out to the site to delineate the wetlands as was asked. Mr. Esenwine stated that we have gotten way off the subject and would like to get back to the application at hand.

Mr. Siciliano stated that since the last meeting, we have presented the driveway plan to satisfy the abutters concerns about the drainage across to their property.

Anthony Costello, Engineer from AC Engineering explained his engineering plan shows that the proposed culvert will handle a 50 year storm. The other crossing has about 26 acres to empty into the land to the Reynwood lane. He is proposing an 18" culvert. With this proposed culvert there will be no more water than exists today: if it is it will be miniscule at best. They will not be creating more than what exists today. Mr. Costello stated the water runs across the property down along the back of the development into the end lot which has a wetland. It then sits there and then travels through a 15" culvert toward the flood control.

Mr. Esenwine asked Mr. Costello, that in his expert opinion with that 15" culvert that is planned to go in there, can you state how much the flow of the wetland area would be restricted or enhanced. Mr. Costello stated that the flow will actually be decreasing.

Mr. Stagakis asked why he keeps referring to things off the chart. The report that Mr. Costello provided the board is for a 10 year storm event only.

Mr. Siciliano asked those who then went on the site walk their opinion of the property after either on a site walk or a visit on their own. Mr. Stagakis stated that he didn't know: he would have to look at the reports by the engineer. Mr. Esenwine stated that the property certainly looked a lot different in reality then from the map. He felt it was very important that he saw it because there is really a lot more dry area to the property then it appeared on the map. The amount of standing water was not very much, yes the soil was

wet and to him that wetland could hold a lot of water before it would be a problem to the surrounding area. The crossings being proposed before us this evening are extremely minimal and this plan is certainly better than the first plan. Mr. Ruoff stated that he went out to the site because he wanted to get a feel from the contours and there were concerns about the abutters and it seemed to him that, where there is run off it depends on the weather.

Chairman Dearborn closed this portion of the hearing and opened it up to the public.

Approving Abutters: None

Disapproving Abutters: Doug Hatch stated that he would like to submit a package of information for the record and to be put in the file. The package contains waivers they had to obtain from the State of NH to get a replacement septic system. It also showed pictures of the back yard when it is really wet. He stated that right now it seems pretty dry there. The only issue he has is who is accountable to his property if he sustains more water. Chairman Dearborn stated that he doesn't see that they will be generating any more water to his property. It is designed to reduce the flow at the peak times. Mr. Hatch is looking for assurance that this won't make it worse. Chairman Dearborn stated that this board can't give them assurance. Mr. Hatch added that the previous acts granted by the Town are partly the vault of the Town now and not the applicant.

Linda Chatfield asked why the 15" culvert was mentioned off site. Mr. Siciliano stated that all the water goes through away from the site. She has a dug well and is concerned with the quality of water. She asked what the proposed crossing was taking into consideration. Because when you cut down trees and remove them, once removed they will no longer be there to absorb some water. She is concerned with the underground water as what is on her property goes in from under the ground.

Other Boards: None

Public At Large: Steve Najjar stated that one thing that concerns him is that because of his professional background he would like to comment on a couple of things that he heard. This is prohibited by the article. If it is not listed in the zoning ordinance it is prohibited. His concern is with the private culvert it tends to not be properly maintained over the years. He personally thinks that a 15" culvert is small.

Rebuttal of applicant: Mr. Siciliano stated that on the site walk those present saw that what Mr. Hatch is trying to tell the board is that his property is going to get flooded from this other wetlands. There is a current wetland next to his house. A small amount of water coming from this crossing may be getting to Mr. Hatch's, but it will be a very small amount.

Mr. Esenwine asked, if increasing the size of both of those culverts would help to ease some of the concerns this evening. Mr. Costello stated no, other than leaf clogging. They would actually impact more wetlands because there would be 3" more fill.

Disapproving Abutters rebuttal: Mr. Hatch stated that they have been here for 30 years and there are areas where the water flow has cut and channeled banks changing the

direction of the water. Again he wanted to reiterate their concerns: additional water flow; changing direction of the waters; etc.

Chairman Dearborn closed the public hearing at 8:55 PM.

CASE DECISION: Point #1: Forrest Esenwine moved to accept point #1; June Purington seconded the motion. Discussion: none. Vote: 4 in favor (Purington; Dearborn; Ruoff and Esenwine) and 1 opposed (Stagakis). Point #2: Forrest Esenwine moved to accept point #2; June Purington seconded the motion. Discussion: none. Vote: 4 in favor (Purington; Dearborn; Ruoff and Esenwine) and 1 opposed (Stagakis). Point #3aa: Forrest Esenwine moved to accept point #3aa; June Purington seconded the motion. Discussion: none. Vote: 4 in favor (Purington; Dearborn; Ruoff and Esenwine) and 1 opposed (Stagakis). Point #3bb: Forrest Esenwine moved to accept point #3bb; June Purington seconded the motion. Discussion: none. Vote: 4 in favor (Purington; Dearborn; Ruoff and Esenwine) and 1 opposed (Stagakis). Point #4: Forrest Esenwine moved to accept point #4; June Purington seconded the motion. Discussion: none. Vote: 4 in favor (Purington; Dearborn; Ruoff and Esenwine) and 1 opposed (Stagakis). Point #5: Forrest Esenwine moved to accept point #5; June Purington seconded the motion. Discussion: none. Vote: 4 in favor (Purington; Dearborn; Ruoff and Esenwine) and 1 opposed (Stagakis). Chairman Dearborn stated that the variance requested in case #0909 carries with a vote of 4 in favor (Purington; Dearborn; Ruoff and Esenwine) and 1 opposed (Stagakis).

Chairman Dearborn moved to seat Ian McSweeney as a voting member for this case instead of Mr. Stagakis.

Case #1209 Glenn A. Price
Variance, Article 17, Section 17.1.1
The applicant is requesting permission to construct a single family home.
Tax Map 108-043 43 Pondview Road

Chairman Dearborn stated that he would like to see if the board feels the application for this hearing is complete. Forrest Esenwine moved that case #1209 be accepted as complete; David Ruoff seconded the motion, all in favor. Glenn Price was present and stated that he would like Bobbi-Jo Plamondon speak on his behalf. Ms. Plamondon stated that Mr. Price purchased the land in 1985. When he purchased the lot he could build on it and now he can't. The Prices' are moving out of Town and it makes it difficult to sell a lot if you can't build a home on it. Ms. Plamondon then went through the five points of hardship as follows:

1. There will not be a diminution of value surrounding properties as a result of granting this variance because: A home could be constructed, which would enhance the property value of the other homes in the community. Also another resident could contribute to road maintenance costs.
2. The granting of a variance will not be contrary to the public interest because: When I purchased this property 24 years ago, I had the right to build a structure. The Town of Weare changed its regulations and is now prohibiting construction

- on this lot. Being granted the variance allowing a structure to be built would allow more contribution to the maintenance of the road, reducing costs to residents.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: I have been paying taxes on this property for 24 years. When I purchased the land my intent was to build, and it was permitted. Now that the Town has changed its regulations, the variance must be granted for the original intent to be fulfilled.
 - bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: The benefit I seek is to fulfill the original intent of allowing a structure to be built. The hardship is that the property was rezoned, which doesn't allow a structure to be built. This hardship has made the property less valuable.
 4. That through the granting of relief by variance substantial justice will be done because: The ability to build a structure will add value to my property, and the adjacent properties. The original intent of the property as so stated years ago would be reinstated, which would lift the hardship.
 5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: The original intent of the new regulations was to reduce the liability of road maintenance during snowy weather. This particular community is a mature one. The road is established, and there are homes on either side of the lot. The building of a structure would enhance the area and an additional owner contributing to its expenses would defray the maintenance costs now existing.

Chairman Dearborn stated that typically the board looks at the maturity of the area. Ms. Plamondon stated that the majority of the lots are built out. There is not a formal agreement for maintenance. There are only a few that contribute.

Forrest Esenwine stated that the statements made in the answers indicate that contributions could be made to help defray the expenses. He doesn't see how that could be done without a formal association.

Approving Abutters: None

Disapproving Abutters: none

Public At Large: Steve Najjar was present. He wanted to talk a little about the road. The last time any gravel work was done about 4 years ago. The road has a very steep incline. There is a steep slope shown to get to their lot. The argument of the neighborhood being built out should not be considered. It is not a trivial amount that is still available. There are some real issues with the roadway. The postal service won't deliver and neither will UPS and in the winter sometimes oil delivery trucks have issues getting in.

Other Boards: None

Glenn Price stated that as a non-engineer the comment about access he would not build straight down it would have a curve. He has lived across the street from this lot for 30 years.

Ms. Plamondon discussed the situation about the lack of having a formal road agreement.

Chairman Dearborn closed this hearing at 9:27 PM.

DISCUSSION: David Ruoff stated that he remembered vividly the prior request for lot 40. He remembers looking at pictures of the road it is really a much stressed road. He felt that building down in the funnel is not as bad as living on the hill. These 17.1.1 applications have bothered him because the Town has collected taxes and they can't exercise their right.

CASE DISCUSSION: Point #1: Forrest Esenwine moved to accept point #1; June Purington seconded the motion. Chairman Dearborn stated that he would like to discuss any possible conditions that board members may be thinking about like signage, liability, having the Public Works Director pass judgment pre building permit and after building but prior to occupancy in the event this passes muster. Forrest Esenwine stated that based on the answer that a home would enhance the property values and contribute to the road maintenance costs are not factual. Vote: 3 in favor (Purington; McSweeney and Dearborn) and 2 opposed (Ruoff and Esenwine). Point #2: Forrest Esenwine moved to accept point #2; June Purington seconded the motion. Discussion: Mr. Esenwine stated that the answer infers that the Town changed the regulations therefore it should be granted. By that way of thinking, zoning is useless because anything in place prior to the adoption of the zoning ordinance in 1988 should be granted. He thinks that all ordinances are there for reasons and the point is there was a period of time when they could build on it. Elwood Stagakis stated that he agrees with Mr. Esenwine but in the last 3 years we discuss "substantially developed" and if it is we grant it. Vote: 2 in favor (Purington and Dearborn) and 3 opposed (McSweeney; Ruoff and Esenwine). Point #3aa: Forrest Esenwine moved to accept point #3aa; June Purington seconded the motion. Discussion: Mr. Esenwine stated that it was all stated in point #2. Vote: 2 in favor (Purington and Dearborn) and 3 opposed (McSweeney; Ruoff and Esenwine). Point #3bb: Forrest Esenwine moved to accept point #3bb; Ian McSweeney seconded the motion. Discussion: None. Vote: 2 in favor (Purington and Dearborn) and 3 opposed (McSweeney; Ruoff and Esenwine). Point #4: Forrest Esenwine moved to accept point #4; David Ruoff seconded the motion. Discussion: none. Vote: 2 in favor (Purington and Dearborn) and 3 opposed (McSweeney; Ruoff and Esenwine). Point #5: Forrest Esenwine moved to accept point #5; David Ruoff seconded the motion. Discussion: Forrest Esenwine stated that the original intent as stated in the explanation is not the intent of the zoning ordinance, it may only have been a part of it. Vote: 2 in favor (Purington and Dearborn) and 3 opposed (McSweeney; Ruoff and Esenwine). Chairman Dearborn stated that the motion failed for points 2-5, therefore the variance is denied. By State Statute all five points of hardship must be voted on in the affirmative.

Ms. Plamondon asked about recourse. Mr. & Mrs. Price pay taxes based on a \$60,000 assessment. They have paid the taxes every year for the past 24 years. Now they are told they can't build a home on that lot. Chairman Dearborn explained the rehearing process and pointed out that there is 30 days to bring forth a request for rehearing.

Glenn Price stated that all he can say is that he is very disappointed with the decision. He has paid a great deal of taxes each year on this vacant lot and now they are told that they can't get a building permit for a single family home.

IV. OTHER BUSINESS:

SEPTEMBER 1, 2009 MINUTES: Forrest Esenwine moved to approve the September 1, 2009 minutes as distributed; June Purington seconded the motion, all in favor except for Ian McSweeney who abstains.

CASE #2707 – REQUEST FOR RE-HEARING CINDY KAZMARSKI: The board read the request dated September 11, 2009 asking for an extension. June Purington moved to grant the extension for Case #2707 as requested for one year; David Ruoff seconded the motion. Vote: 4 in favor (Purington; McSweeney; Dearborn and Ruoff) and 1 opposed (Esenwine).

CASE #2504 – REQUEST FOR RE-HEARING – ROBERT BAILEY: The board read this request from Robert Bailey for another extension. Forrest Esenwine moved to grant the extension for Case #2504 as requested for one year; David Ruoff seconded the motion. Vote: 5 in favor (Purington; McSweeney; Dearborn; Ruoff and Esenwine).

V. ADJOURNMENT:

As there was no further business to come before the board, June Purington moved to adjourn the meeting at 10:25 PM; Forrest Esenwine seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator